

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CRR No.696 of 2021**

**Date of Decision: 27.08.2021**

Pritam

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Pratham Sethi, Advocate,  
for the Petitioner

Mr. Bhupender Singh, Dy. Advocate General, Haryana  
for the Respondent-State.

**SUDIP AHLUWALIA J.**

The instant Revision petition has been filed under Section 439 read with 167(2) of the Code of Criminal Procedure challenging the order dated 24.03.2021 passed by Ld. Addl. Sessions Judge, Fatehabad in case FIR No.277 dated 29.07.2020, registered under Sections 22-C, 27-A, 61, 85 of the NDPS Act, 1985, at Police Station Sadar Fatehabad, District Fatehabad.

[2] Background of the matter is that the Petitioner was alleged to have been apprehended along with 2200 strips on 29.07.2020 with the contraband in the form of “Alprazolam Tablets” weighing 4 Kg 400 gms. He was produced before the Court on 30.07.2020 after which he was remanded to police custody for a day and on subsequent production before the Court on the next date (31.07.2020) he was remanded to judicial custody. As such according to him, he would have become entitled to

statutory bail in terms of Section 36-A (4 of the NDPS Act read with Section 167(2) of the Cr.P.C.) after completion of 180 days on 27.01.2021 during which period no final report under Section 173 Cr.P.C. was submitted against him. However, before expiry of that period of 180 days, the Ld. Addl. Sessions Judge, Fatehabad in allowing an application on behalf of the State for extension of time for submission of the final report under Section 173 Cr.P.C., extended such time for a month. Thereafter, the State again sought extension of time vide a fresh application on 22.02.2021 Annexure P-3, which was allowed by the Ld. Court below again on the same date and consequently one month's time was extended to the Investigating Agency beyond 26.02.2021 for submitting its final report. But once again on 18.03.2021 vide a third application Annexure P-4 the prosecution sought further extension of time to submit its final report, which was again allowed by the Ld. Court below vide its order of the same date and further time for submission of the final report was extended by another two months beyond 27.03.2021. From the side of the Petitioner an application for seeking his release under Section 439 read with Section 167 (2) Cr.P.C. Annexure P-4 was filed on 23.03.2021. But the same was dismissed by the Ld. Court below vide its impugned order on 24.03.2021 with the following observations *inter alia* -

*“9. The final report under Section 173 of Cr.P.C. has, no doubt, not been presented in the Court but this Court has granted two months more time to submit final report under section 173 of Cr.P.C. vide order dated 18.03.2021. As per the police reply, the petitioner/accused is also involved in one more case under NDPS Act, bearing FIR No. 247 dated*

*28.07.2020, under sections 22-C/27-A/61/85 of NDPS Act, Police Station Bhuna. The authority – **Gurjant Singh @ Sona's** case relied upon by learned counsel for the petitioner/accused is not applicable to the facts of the present case as facts of the present case and that case are not identical.”*

[3] It is undeniable that the Petitioner's application for release by way of default bail was filed only on 23.03.2021 at a stage when extension of time for submitting final report had already been granted by the Ld. Court below more than once on 22.02.2021 and 18.03.2021. To that extent the Petitioner's subsequent application for grant of statutory bail dated 23.03.2021 would appear to be untenable, since such bail was sought for at a stage when time for submission of final report had already been extended. Ld. Counsel for the Petitioner has nevertheless relied upon various judgments passed by Co-ordinate Benches of this Court to contend that the Petitioner's right to statutory/ default bail cannot be defeated by mechanical extension of time for such reasons as non-receipt of Chemical Examination Report/ FSL report or impending arrest of other accused persons.

[4] In **Hoshiar Singh @ Gora vs. State of Punjab, Criminal Revision No. 2537 of 2018** decided on 17.11.2018, this Court had set aside the order of the Trial Court extending time for a period of three months for filing the final report under Section 173(2) of the Cr.P.C., and directed the accused to be released on bail by observing *inter alia* -

*“Considering the view taken by this Court in Sanjeev Kumar's case (supra), I find that merely because the report of the chemical examiner/FSL was not received, is not a ground to decline the concession of bail to the petitioner as per proviso*

*to Section 36-A(d)(4) of the NDPS Act. In case, the investigation is not completed within a period of 180 days, the Court can extend the said period on a request of the public prosecutor, indicating the progress of the investigation and specific reasons for the detention of the accused beyond the period of 180 days. In the application dated 23.04.2018 (Annexure P2) filed by the public prosecutor, the only reason given is that the report of the chemical examiner/FSL is awaited and arrest of some other persons is effected and therefore, this cannot be a ground for detention of the petitioner beyond the period of 180 days. Therefore, this Court is of the considered view that the petitioner deserves the concession of bail during the pendency of the petition. Even otherwise, in view of the judgement of the Hon'ble Supreme Court in Mohan Lal's case (supra), the complainant ASI Paramjit Singh and the investigating officer are the same officer and no second investigating officer was appointed and therefore it will be open for the trial Court to decide whether the investigation was carried out in accordance with law or not.”*

[5] In **Sanjeev Rai vs. State of Punjab, (2016) 2 RCR (Cri) 298**

similarly statutory bail was ordered to be granted to the accused by this Court where extension for time to submit final report had been granted by the Ld. Trial Court by observing *inter alia* -

*'11. Right of the accused to be released on bail accrued on the default of the prosecution in filing the challan within the stipulated period and furthermore, in case, the application has been moved for extension of time before the expiry of the stipulated period on the very same day when the application for bail has been moved by the accused for grant of bail or even before expiry of stipulated period, the accused becomes*

*entitled to bail as per provisions of Section 167(2) Cr.P.C.*

*12. Even in case of NDPS, the recovery can be huge but the same is irrelevant as the Court cannot delve upon the issue on the basis of quantity recovered by considering the indefeasible right, which has been accrued to the petitioner. Hon'ble the Supreme Court has given specific observations in Nirala Yadav's case (supra). Even in case, the accused-petitioner is involved in number of cases, then also it is not a sufficient ground to defeat the indefeasible right of the accused to be released on bail in case, the challan is not presented within the stipulated period.*

*xxxxxx*

*xxxxxx*

*15. In the present case, the petitioner was arrested on 18.10.2014 and was produced before the Illaqa Magistrate on 19.10.2014 and since then, he is in custody. The challan has not been presented by the prosecution till date whereas the statutory period of 180 days has expired on 16.04.2015. Although, the prosecution moved an application for extension of time on 13.04.2015 for grant of further 60 days time, which was allowed on the same day and period of 40 days was granted to the prosecution to present the challan. Even after expiry of period of further 40 days, the challan was not presented and one more application was moved for grant of further 60 days time for presentation of challan, which was allowed and again period of 60 days was extended for presentation of challan. Even after lapse of 280 days (180+40+60), the prosecution did not present the challan along with the report of Chemical Examiner. On the third occasion, another application was moved on 04.07.2015 for grant of extension of time and the same has yet not been decided by the trial Court. Meanwhile, an application was*

*moved by the petitioner for grant of bail under Section 167(2) Cr.P.C., which was rejected by the trial Court on the ground that the investigation has yet not completed and period has been extended for presentation of challan vide order dated 25.05.2015. But in spite of availing various opportunities, after getting benefit of Section 36A (4) on two occasions, the challan has not been presented and as such, the prosecution cannot take benefit of Section 36A (4) for an indefinite period as it is the duty of the prosecution to act with promptness to submit the challan before the Court and the accused-petitioner should not suffer due to faulty investigation or slow pace of the prosecution.*

16. *The delay has occurred due to the fault of the prosecution as the challan has not been presented even after expiry of 280 days and an indefeasible right has accrued to the petitioner in view of the provisions of Section 167(2) Cr.P.C.*

17. *Accordingly, in view of the facts and law position as discussed above, the present petition is allowed and the petitioner is directed to be released on bail in view of the provisions of Section 167 (2) Cr.P.C. to the satisfaction of the trial Court.*

[6] In **Rajwinder Singh v. State of Punjab 2016 SCC OnLine (P&H) 5076** similarly bail was granted to the accused where time for submission of final report was extended by the Trial Court thrice and his bail application had also been rejected by the Trial Court on the ground that it could not be allowed as extension of time had already been granted to the Investigating Agency. This Court set aside the order of the Trial Court and directed release of the accused with the following observations -

*'10. The Hon'ble Supreme Court in Hitendra Vishnu Thakur v. State of Maharashtra, 1994(3) RCR (Criminal) 156 while*

*dealing with the proviso inserted as clause (bb) in sub-section (4) of Section 20 of TADA which is pari-materia with the proviso to sub-Section (4) of Section 36-A of the Act had categorically held that even though the proviso does not specifically mandate the issuance of a notice to the accused while seeking extension yet the issuance of a notice has to be read into the provision which would be, both, in the interest of the accused, as also the prosecution as well as for doing complete justice between the parties. Such requirement was held to be in consonance with the principles of natural justice.*

*11. Adverting back to the facts of the present case, the applications submitted by the Investigating Agency under Section 36- A of the NDPS Act seeking extension of time had cited only one ground i.e. report of the Chemical Examiner having not been furnished.*

*12. There has been a non-compliance of the provisions contained in Section 36-A of the NDPS Act. The provision mandates a report of the Public Prosecutor indicating the progress of the investigation as also the specific and compelling reasons in seeking detention of the accused beyond the period of 180 days.*

*13. In the facts of the present case, counsel appearing for the petitioner has adverted to the orders passed by the trial Court granting repeated extensions for submission of final report and perusal of the same would reveal that apart from mentioning that the Chemical Examiner report was not forthcoming, no other compelling/cogent reason has been cited.*

*14. This Court would have no hesitation in observing that the orders passed by the trial Court granting repeated extensions to the Investigating Agency for submission of final report have been passed in a routine and mechanical fashion.*

15. *The petitioner under Section 167(2) had an indefeasible right for grant of bail under such circumstances.'*

[7] In **Harmandeep Singh @ Harman v. State of Punjab, 2015 SCC OnLine P&H 9034** similarly the accused was ordered to be released on bail where time for submitting the final report by the Investigating Agency had been extended by the Trial Court with the following observations -

*'19. Having heard learned counsel for the parties and going through contents of the case and case law cited at the bar, it is found that application submitted by Additional Public Prosecutor does not satisfy the ingredients and requirement of law in terms of Sanjay Kumar Kedia @ Sanjay Kedia's case (supra) and other decisions rendered by this Court as mentioned in the preceding para. No reasons much less specific reasons have been stated in the application as to how the detention of the petitioner could have served any valid purpose beyond period of 180 days. In the event of prosecution not obtaining report of Chemical Examiner for the purposes of filing challan under Section 173 Cr.P.C, there is noncompliance of Section 36-A of the N.D.P.S. Act.*

*20. For the reasons recorded above, this Court finds that the application seeking extension of time for filing report under Section 173 Cr.P.C., and impugned order passed thereon by the Judge, Special Court, Tarn Taran, granting extension in time has been made in routine and mechanical manner.*

*21. Consequently, this Court is of the considered view that the petitioner(s) deserves concession of bail in terms of Section 167(2) Cr.P.C.'*

[8] In **Hardeep Singh v. State of Punjab 2015 SCC OnLine P&H 12232**, it was observed by this Court -

*“3. Here it would be pertinent to mention that no notice of application moved by prosecution for extension of time dated June 13, 2015 was given to the accused. No reply has also been sought from petitioner by learned trial Court. Moreover, period under Section 36-A (4) of the Act was also extended vide order dated June 15, 2015 i.e. after the expiry of 180 days though an application was moved on June 13, 2015. After the expiry of period of 180 days on June 13, 2015, an indefeasible right had accrued to the petitioner. There is also nothing on record to suggest that petitioner was afforded an ample opportunity to defend application for extension of time.*

*4. By now it is pretty settled that Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused which is otherwise not permissible. After the expiry of extended period, an indefeasible right stood accrued to the petitioner on March 14, 2015, which has been sought to be scuttled down by learned trial Court by way of allowing application for extension of time, that too, without hearing the accused/petitioner, against whom, the order was passed.”*

[9] The present case appears to be squarely covered by the aforesaid decisions of various Benches of this Court. Perusal of both the applications of the State dated 22.02.2021 and 18.03.2021, which are on record as Annexures P-3 & P-4, would reveal that such extension of time was sought on the ground that the Chemical Examination / FSL Report had not been received from the Director of Forensic Science Laboratory, Madhuban (Karnal). Mechanical repeated extension of time on the same ground by the Ld. Trial Court in the circumstances cannot be treated as

anything else except mechanical orders passed by the Ld. Trial Court. No exceptional circumstances were revealed which could have indicated why the final report could not have been presented within the statutory period of 180 days or thereafter even in the extended period of two months, although in its recent decision in “*S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District, 2020 SCC OnLine SC 529*”, the Apex Court has observed that even in very exceptional circumstances such as the lockdown announced by the Government of India in the wake of the Covid pandemic 2020 would not restrict the rights of an accused regarding his indefeasible right to get a default bail, as would be clear from the following observations of the Supreme Court -

*'26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.'*

[10] In any event, perusal of both the extension orders dated 22.02.2021 Annexure P-2 and 18.03.2021 Annexure P-3 go to show that these were passed without notice or any opportunity of hearing to the accused – Petitioner, which again is not in accordance with the decision of this Court in *Hardeep Singh's* case (supra).

[11] For the aforesaid reasons, this Court finds merit in the petition which is consequently allowed after setting aside the impugned orders of the Trial Court. The Petitioner is now permitted to be released on bail to the satisfaction of the Ld. Trial Court.

**27.08.2021**

Satyawan

**(SUDIP AHLUWALIA)  
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes